

REMARKSStatus of the Claims

In the Office Action mailed August 22, 2007, claims 58, 63, 65-83, 86, and 97-103 are pending. Claims 58, 63, 65-83, 86, and 97-103 were rejected. The rejection is respectfully traversed. Claims 1-57, 59-62, 64, 84, and 87-96 have been cancelled without prejudice or disclaimer. Claims 58, 63, 65-75, 77-82, 85-86, 97-98, 100, and 102-103 have been amended. New claims 104-107 have been submitted.

The Applicant notes that new claims 104-107 were presented earlier in the case as claims 64, 87, 61, and 62, respectively, and were cancelled in the last response filed May 25, 2007. The Applicant wishes to resubmit these claims. Further, the amendments made herein return the claims substantially to the language that existed prior to the claim amendments made in the last response. Thus, no new matter has been added. As such, the remarks and arguments herein will address the rejections set forth in the present Office Action mailed August 22, 2007, as well as in the previous Office Action dated January 25, 2007. Reconsideration and withdrawal of the outstanding rejections are respectfully requested in view of the following remarks.

CLAIM REJECTIONS – 35 U.S.C. § 102(b)Claims 86, 87 (now 105) and 97Rejections as in Office Action dated January 25, 2007

Claims 86, 87 and 97 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,106,742 to Schultz, et al. (hereinafter "Schultz"). Applicant initially notes that claim 87 had been cancelled, but is now presented as new claim 105. For anticipation under 35 U.S.C. § 102, the reference must teach every aspect of the claimed invention either explicitly or

implicitly. Any feature not directly taught must be inherently present. M.P.E.P. § 706.02.

Schultz does not teach or suggest at least "fixing means for removably affixing the applicator to a neck of a receptacle," as recited in claim 86. Rather, Schultz intends to prevent any removal of the applicator 27. In particular, Schultz states that rings 49 and 51 are "designed . . . to hold the actuator assembly connected to the head." (Col. 2, ll. 35-47.) Further, Shultz discloses using the applicator 27 for shoe treating liquids and states that "the applicator is hermetically sealed . . . to prevent the product absorbed therein from becoming dry . . ." (Col. 3, ll. 32-37.) Therefore, Schultz actually teaches away from "removably" fastening the applicator to the neck of the receptacle.

Since each and every element, as set forth in the claim, is not found therein, either expressly or inherently described as required by the M.P.E.P., Shultz cannot be said to anticipate "fixing means for removably affixing the applicator to a neck of a receptacle," as recited in claim 86. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 97 and 105 depend from independent claim 86. Because claim 86 is believed to be in condition for allowance, claims 97 and 105 are also believed to be in condition for allowance, at least by reason of their dependency from claim 86.

Rejections as in Office Action dated August 22, 2007

Claims 86 and 97 are rejected under 35. U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,046,593 to Goldman et al. (hereinafter "Goldman"). Goldman does not teach or suggest, at least, "an annular bead formed on an inside surface of said assembly skirt and spaced from said free end of said assembly skirt," as recited in claim 86.

Goldman discloses an applicator head 30 having threads 31, an outwardly extending rib 39, a sealing disk 36 and a baffle

disk 37. (Col. 2, ll. 45-67.) The Examiner argues that sealing disk 36 is akin to Applicant's annular bead. (Office Action p. 2.) To the contrary, Goldman discloses, "[i]nterposed between the head 30 and the flat upper surface of the member 25 is a sealing disk 36 . . . ." (Col. 2, ll. 54-59.) The sealing disk 36 is shown as a separate piece in Fig. 1. In describing its operation, Goldman states, "[i]n order that cleaning fluid or the like may be dispensed from the can 1, and assuming that the parts are fully assembled in the relation one to another as shown in the drawing, the sealing disk 36 may be removed. . . ." (Col. 3, ll. 4-12.) Thus, in its fully assembled and ready to dispense state, Goldman's applicator 30 does not include the sealing disk 36. The sealing disk 36 is similar to a conventional closure cap for the container 1. The purpose of the sealing disk 36 is to prevent the contents from contacting the fabric 33 until a user is ready.

Furthermore, claim 86 requires "an annular bead." "Annular" is defined by Dictionary.com as "having the form of a ring." Thus, there must be an aperture located in the annular bead. To liken the sealing disk 36 to an annular bead is erroneous because the sealing disk does not contain an aperture. Further, were there to be an aperture in the sealing disk 36, it would not serve the function that Goldman intends, that of sealing the container 1 and preventing the contents from being dispensed until a user is ready. (Emphasis added.)

With respect to the baffle disk 37, Goldman states, "between the sealing disk 36 and the head 30 is interposed a baffle disk 37 having a central opening 38 which is in axial alignment with the opening 28." (Col. 2, ll. 53-59.) The baffle disk is separate from the applicator and is not formed therewith.

Since each and every element, as set forth in the claim, is not found, either expressly or inherently described as required

by the M.P.E.P., Goldman does not anticipate "an assembly skirt having a free end and including an annular bead displaced from said free end of said applicator and on an inside surface of said assembly skirt," as recited in claim 86.

Claims 97 and 105 depend from independent claim 86. Because claim 86 is believed to be in condition for allowance, claims 97 and 105 are also believed to be in condition for allowance, at least by reason of their dependency from claim 86. Accordingly, withdrawal of the rejection is respectfully requested.

**CLAIM REJECTIONS – 35 U.S.C. § 103(a)**

**Claims 58, 62 (now 107), 63, 76-83, 85, 98, 99 and 101-103**

**Rejections as in Office Action dated January 25, 2007**

Claims 58, 62, 63, 76-83, 85, 98, 99 and 101-103 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,121,906 to Hulsh (hereinafter "Hulsh") in view of U.S. Patent No. 6,270,277 to Ogino, et al. (hereinafter "Ogino"). This rejection is respectfully traversed. Applicant initially notes that claim 62 had been cancelled but is now presented as new claim 107.

The Examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. M.P.E.P. § 2142. To establish a prima facie case of obviousness, three criteria must be met. First, there must be some suggestion or motivation to modify the references or to combine reference teachings. Second, there must be reasonable expectation of success. Finally, the prior art must teach all the claim limitations. M.P.E.P. § 2142. In light of the following arguments, the combined references do not teach or suggest all of the claim limitations of the present invention. Applicants respectfully point to the final prong of the test which states that the prior art must teach all of the claim

limitations. At the very least, the combined references do not teach or suggest all of the limitations of these claims, as stated below.

Hulsh is directed to a squeezable tube adapted to perform as an applicator. Nowhere does Hulsh teach or suggest, "a sealing surface that abuts said shoulder when said accessory is fixed to said neck," as recited in claim 58. Generally, Hulsh discloses a container 10, a closure cap 20, a container or applicator cap 30 and a cover 40. (Col. 2, ll. 34-43.) The applicator cap 30 has a pair of cylindrical formations 31 and 34 secured by an annular top wall 36. (Col. 2, ll. 64-72.) The annular top wall 36 presents a radially inside portion which, after removal of the closure cap 20 and screwing of the applicator cap 30 on the container 10, abuts a shoulder 14 connecting the first portion of the container neck to the second portion thereof. The radially inside portion of the top wall 36 has no sealing function and cannot be said to be a sealing surface as recited in the present claims.

The sealing function of Hulsh is provided only by the closure cap 20. For instance, Hulsh states, "[p]rovision of the closure cap 20 makes it impossible to inadvertently or deliberately express the contents of the container when this cap is assembled into the dispenser in the manner seen in Figure 2. (Col. 3, ll. 40-53.) Further, Hulsh states that the closure cap 20 "precludes fouling of the sponge applicator 38 and the threads 13 and 35 with the material from the container." (Id.) Thus, (as seen in Fig. 3) without the closure cap 20, where the radially inside portion of wall 36 abuts shoulder 14, the thread 13 located on the second portion of the neck would be fouled. Thus, the radially inside portion of the wall 36 has no sealing function and cannot be said to be a sealing surface.

Furthermore, Hulsh states that after usage, the reduced portion of the neck 15 may be wiped and then the closure cap 20

may be screwed upon the neck 15 and the entire neck area flushed with running water. (Col. 4, ll. 48-64.) This is yet another indication that the radially inside portion of wall 36 abutting shoulder 14 may foul the threads 13, providing no sealing function. Therefore, this radially inside portion of wall 36 cannot be said to be a sealing surface.

Ogino does not overcome the deficiencies of Hulsh. Ogino is also directed to a container adapted to perform as an applicator. Ogino's applicator contains holes for dispensing its contents and a plurality of filament portions for dispersing the contents once dispensed. Ogino fails to disclose an assembly skirt cooperating with the second portion. Further, Ogino does not disclose anything abutting the shoulder. Therefore, Ogino fails to disclose a sealing surface as claimed.

In view of the foregoing, neither Hulsh nor Ogino teach or suggest at least "a sealing surface that abuts said shoulder when said accessory is fixed to said neck," as recited in claim 58. Accordingly, Applicant submits that claim 58 patentably distinguishes over these references such as to warrant its allowance.

Claims 63, 76-83, 85, 98, 99, 101-103 and 107 depend from independent claim 58. Because claim 58 is believed to be in condition for allowance, claims 63, 76-83, 85, 98, 99, 101-103 and 107 are also believed to be in condition for allowance, at least by reason of their dependency from claim 58.

Claim 58, 63, 79-83, 98, 99 and 101-103

Rejections as in Office Action dated August 22, 2007

Claim 58, 63, 79-83, 98, 99 and 101-103 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hulsh in view of Ogino and Schultz. This rejection is respectfully traversed. As noted above, Hulsh and Ogino do not teach or suggest at least "a sealing surface that abuts said shoulder when said accessory

is fixed to said neck," as recited in claim 58. Shultz does not overcome the deficiencies of Hulsh and Ogino.

Schultz discloses a container having a neck with a first portion having a first diameter, and a second portion below the first portion having a second diameter; the second diameter is larger than the first. The applicator of Schultz is snap fitted onto the first portion. Schultz states that rings 49 and 51 are "designed to have an interference fit with and to snap over the retaining rings 23 and 25. . . ." (Col. 2, ll. 35-47). Such snap fitting provides a gap for the actuator assembly 27 to slide on the head 17 between two positions to dispense the product. (Id.) Further, Schultz also states that the locking rings 49 and 59 "are designed to have a snug sliding fit . . ." (Id.)

Furthermore, in Figs. 2-3, the slanted portion connecting the first portion to the second portion is free of any abutment. The actuator assembly 27 as shown in both of these figures does not abut "said shoulder," as recited in claim 58. Even in the "closed" condition of Fig. 2, there is no abutment with the shoulder. In addition, as the contents are dispensed through orifice 21, some of the contents may be deposited in the space between the top of the first portion of the neck and the bottom of the actuator assembly 27. Then, as the actuator assembly 27 is slid back and forth over the first portion of the neck, the contents can easily leak through and foul the entire neck, including the second portion below the shoulder. Thus, the actuator assembly does not seal or prevent such leakage and therefore cannot be said to include a "sealing surface" as recited in claim 58. Shultz makes no mention of trying to seal that area. Had Schultz intended such a sealing configuration, Schultz would not have disclosed an actuator that slides back and forth, providing gaps that can easily leak.

Lastly, Schultz also does not disclose, "an assembly skirt that cooperates with said second portion," as recited in claim 58. As shown in the figures, the actuator assembly 27 does not reach the second portion of the neck.

Therefore, neither Hulsh, Ogino or Schultz, alone or in combination, teach or disclose, "a sealing surface that abuts said shoulder when said accessory is fixed to said neck," as recited in claim 58.

Claims 63, 79-83, 98, 99 and 101-103 depend from independent claim 58. Because claim 58 is believed to be in condition for allowance, claims 63, 79-83, 98, 99 and 101-103 are also believed to be in condition for allowance, at least by reason of their dependency from claim 58. Accordingly, withdrawal of the rejection is respectfully requested.

Claim 61 (now 106)

Rejections as in Office Actions dated January 25, 2007 and August 22, 2007

Claim 61 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Hulsh in view of Ogino as applied to claim 58 above, and further in view of Schultz. Applicant initially notes that claim 61 had been cancelled but is now presented in a substantially similar form as new claim 106. Further, this is the same rejection as the rejection of claim 58 in the Office Action dated August 22, 2007.

As stated previously, Hulsh and Ogino do not teach or suggest at least "a sealing surface that abuts said shoulder when said accessory is fixed to said neck," as recited in claim 58. Further, Hulsh and Ogino simply do not mention or disclose, "said abutment is achieved through an annular bead," as recited in claim 106. Schultz does not overcome the deficiencies of Hulsh or Ogino.

Although Schultz discloses a container having an applicator with passages, Schultz does not teach or suggest "said abutment is achieved through an annular bead," as recited in claim 106. As noted above, Schultz's actuator assembly 27 cannot abut the shoulder joining the first and second portions of Schultz's neck since it does not reach the shoulder even when in the fully closed position shown in Fig. 2. Further, nowhere does Schultz mention or disclose "said abutment is achieved through an annular bead," as recited in claim 106. Accordingly, neither Hulsh, Ogino, nor Schultz, alone or in combination, teach or suggest the recited claim.

Claims 63, 76, 77-83, 85, 98, 99, 101-103 and 106-107 depend from independent claim 58. Because claim 58 is believed to be in condition for allowance, claims 63, 76, 77-83, 85, 98, 99, 101-103 and 106-107 are also believed to be in condition for allowance, at least by reason of this dependency.

**Claims 64 (now 104), 65-68, 70-72, 74 and 75**

**Rejections as in Office Action dated January 25, 2007**

Claims 64-68, 70-72, 74 and 75 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hulsh in view of Ogino as applied to claim 58 above, and further in view of U.S. Patent No. 6,457,476 to Elmer, et al (hereinafter "Elmer"). Applicant initially notes that claim 64 has been resubmitted as claim 104.

As previously discussed, Hulsh and Ogino do not teach or suggest "a sealing surface that abuts said shoulder when said accessory is fixed to said neck," as recited in claim 58. Elmer does not overcome the deficiencies of Hulsh and Ogino. Elmer discloses a comb-like device for applying product to hair. (Col. 3, ll. 33-48.) The device contains tines 50 having upper and lower apertures for dispensing the contents of the device. (Id.) However, Elmer does not disclose or mention "a sealing

surface that abuts said shoulder when said accessory is fixed to said neck," as recited in claim 58.

Claims 65-68, 70-72, 74-75 and 104 depend from independent claim 58. Because claim 58 is believed to be in condition for allowance, claims 65-68, 70-72, 74-75 and 104 are also believed to be in condition for allowance, at least by reason of this dependency.

**Claims 65-68, 70-72, 74 and 75**

Rejections as in Office Action dated August 22, 2007

Claims 65-68, 70-72, 74 and 75 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hulsh in view of Ogino and Schultz and further in view of Elmer. This rejection is respectfully traversed.

As stated previously, Hulsh, Ogino and Schultz, either alone or in combination, do not teach or suggest "a sealing surface that abuts said shoulder when said accessory is fixed to said neck," as recited in claim 58. Further, as stated previously, Elmer does not overcome the deficiencies of Hulsh, Ogino and Schultz. Accordingly, withdrawal of the rejection is respectfully requested.

**Claim 73**

Rejection as in Office Action dated January 25, 2007

Claim 73 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Hulsh in view of Ogino in view of U.S. Patent No. 2,270,529 to Kirschenbaum (hereinafter "Kirschenbaum"). As previously discussed, Hulsh and Ogino do not teach or suggest "a sealing surface that abuts said shoulder when said accessory is fixed to said neck," as recited in claim 58. Kirschenbaum plainly does not overcome this deficiency. Since claim 73 depends from claim 58, claim 73 is allowable for at least this reason.

As acknowledged by the Examiner, neither Hulsh nor Ogino teach or suggest "a groove extending from a free end of said at least one of said teeth to said dispenser orifice," as recited in claim 73. Kirschenbaum does not supply this missing teaching. Rather, Kirschenbaum discloses a recessed portion 79 running along the teeth from ends opposite the free ends of the teeth to "a point spaced from the free ends thereof." (P.3 ll.20-31 (emphasis supplied).) Groove 80 is provided in the recessed portion. Therefore, groove 80 also runs to a point spaced from the free ends of the teeth. Thus, Kirschenbaum's groove does not run near the free ends of the teeth; it stops short of them. Therefore, Kirschenbaum does not teach or suggest "a groove extending from a free end of said at least one of said teeth to said dispenser orifice," as recited in claim 73.

### Claim 73

#### Rejection as in Office Action dated August 22, 2007

Claim 73 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Hulsh in view of Ogino and Shultz and further in view of Kirschenbaum. As previously discussed, Hulsh, Ogino and Shultz do not teach or suggest "a sealing surface that abuts said shoulder when said accessory is fixed to said neck," as recited in claim 58. Kirschenbaum simply does not overcome this deficiency. Since claim 73 depends from claim 58 and includes all of the limitations of that claim, claim 73 is believed to be allowable for at least this reason.

Furthermore, as just stated, Hulsh, Ogino and Kirschenbaum, either alone or in combination, do not teach or suggest, "a groove extending from a free end of said at least one of said teeth to said dispenser orifice," as recited in claim 73. Shultz does not overcome this deficiency of Hulsh, Ogino and Kirschenbaum as Shultz does not contain any teeth. This is yet another reason that claim 73 distinguishes over the applied art.

In view of the foregoing, withdrawal of the rejection of claim 73 is respectfully requested.

CONCLUSION

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that the Examiner telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which the Examiner might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: February 7, 2008

Respectfully submitted,

By \_\_\_\_\_

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